

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

|  |   |                                       |
|--|---|---------------------------------------|
| In the Matter of                               | ) |                                       |
|  | ) |                                       |
| MALDEN R-1 SCHOOL DISTRICT                     | ) |                                       |
|  | ) | FCC File Nos. 0000942369, 0000942376, |
| Request for Waiver of Section 1.949 of the     | ) | 0000942402, 0000942543                |
| Commission's Rules to Reinststate Licenses for | ) |                                       |
| Fixed Microwave Services Stations              | ) |                                       |
| WPNE336 (Malden, MO), WPNE337 (Bernie,         | ) |                                       |
| MO), WPNE338 (Clarkton, MO), and               | ) |                                       |
| WPNE340 (Gideon, MO)                           | ) |                                       |

**ORDER**

**Adopted: November 18, 2002**

**Released: November 20, 2002**

By the Deputy Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. *Introduction.* On June 27, 2002, Malden R-1 School District (Malden) filed the above-captioned renewal/modification applications for Microwave Industrial/Business Pool Stations WPNE336, Malden, Missouri, WPNE337, Bernie, Missouri, WPNE338, Clarkton, Missouri, and WPNE340, Gideon, Missouri.<sup>1</sup> Malden requests waivers of Section 1.949 of the Commission's Rules<sup>2</sup> to allow the applications to be filed late. For the reasons stated below, we deny Malden's Waiver Requests and dismiss its applications.

2. *Background.* On March 6, 1997, the Commission authorized Malden to operate Stations WPNE336, WPNE337, WPNE338, and WPNE340. On February 11, 2002, renewal notices were sent to Malden.<sup>3</sup> On May 6, 2002, Malden's authorizations for Stations WPNE336, WPNE337, WPNE338, and WPNE340 expired.<sup>4</sup> On June 27, 2002, Malden filed the above-captioned applications requesting renewal of its licenses for the four subject stations, together with requests for waivers of Section 1.949(a) of the Commission's rules, which requires licensees to file renewal applications no later than the expiration date of the license.<sup>5</sup> In its Waiver Requests, Malden states that the renewal notices were misfiled, and did not come to the appropriate person's attention until June.<sup>6</sup>

3. *Discussion.* The Commission's policy regarding reinstatement procedures in the

<sup>1</sup> FCC File Nos. 0000942369, 0000942376, 0000942402, 0000942543 (filed June 27, 2002), Waiver Attachments (Waiver Requests).

<sup>2</sup> See 47 C.F.R. § 1.949.

<sup>3</sup> See FCC Reference Nos. 1280029-31, 1280033, Renewal Reminder letters sent on February 11, 2002. The letters were addressed to Malden Rural 1, P.O. Box 296, 407 J Hwy., Malden, Missouri, 63863.

<sup>4</sup> Malden's authorization to operate Station WPNE339, Campbell, Missouri, also expired on this date. Malden has not requested renewal of that license.

<sup>5</sup> See 47 C.F.R. § 1.949.

<sup>6</sup> Waiver Requests at 1.

Wireless Radio Services is as follows: Renewal applications that are filed up to thirty days after the expiration date of the license will be granted *nunc pro tunc* if the application is otherwise sufficient under the Commission's Rules, but the licensee may be subject to an enforcement action for untimely filing and unauthorized operation during the time between the expiration of the license and the untimely renewal filing.<sup>7</sup> Applicants who file renewal applications more than thirty days after the license expiration date may also request renewal of the license *nunc pro tunc*, but such requests will not be routinely granted, will be subject to stricter review, and also may be accompanied by enforcement action, including more significant fines or forfeitures.<sup>8</sup> In determining whether to reinstate a license, we consider all of the facts and circumstances, including the length of the delay in filing, the reasons for the failure to timely file, the potential consequences to the public if the license should terminate, and the performance record of the licensee.<sup>9</sup> Taking into account all the facts and circumstances of the instant matter, including the specific factors set forth by the Commission, we conclude that Malden's late-filed renewal applications should be dismissed.<sup>10</sup>

4. Under the Commission's rules, licensees must file renewal applications no later than the expiration date of the license for which renewal is sought.<sup>11</sup> In fact, licenses automatically terminate upon the expiration date, unless a timely application for renewal is filed.<sup>12</sup> Applicants may, however, file an application for renewal and request for waiver of the filing deadline if the renewal application is not filed in a timely manner. A waiver of the Commission's rules may be granted where the applicant demonstrates that (1) the underlying purpose of the rule would not be served or would be in the public interest; or (2) in view of unique or unusual factual circumstances of the instant case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.<sup>13</sup>

5. Significantly, Malden does not address the Commission's policy regarding late-filed renewal applications. Malden also fails to provide any reason concerning why a waiver grant is warranted under the circumstances presented. Rather, Malden merely states that it misfiled the Commission's license renewal notices regarding the four subject stations, and only filed the license renewal applications after the renewal notices came to its attention.<sup>14</sup> Thus, Malden concedes that its failure to file its license renewal applications in a timely manner was due to its own administrative oversight. As has been previously held, an inadvertent failure to renew a license in a timely manner is not so unique and unusual in itself as to warrant a waiver of the Commission's Rules.<sup>15</sup> As the Commission has previously explained, reminder letters are a convenience to licensees and do not in any way absolve

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<sup>7</sup> Biennial Regulatory Review - Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Memorandum Opinion and Order on Reconsideration*, WT Docket No. 98-20, 14 FCC Rcd 11476, 11485 ¶ 22 (1999) (*ULS MO&O*).

<sup>8</sup> *Id.* at 11486 ¶ 22.

<sup>9</sup> *Id.* at 11485 ¶ 22.

<sup>10</sup> See, e.g., WSYX Licensee, Inc., *Order*, 15 FCC Rcd 19084 (WTB PSPWD 2000) (denying a request for waiver of Section 1.949 of the Commission's Rules to allow submission of late-filed renewal applications after the licenses expired, and dismissing the subject applications).

<sup>11</sup> 47 C.F.R. § 1.949(a).

<sup>12</sup> 47 C.F.R. § 1.955(a)(1).

<sup>13</sup> 47 C.F.R. § 1.925(b)(3).

<sup>14</sup> Waiver Requests at 1.

<sup>15</sup> See Fresno City and County Housing Authorities, *Order on Reconsideration*, 15 FCC Rcd 10998 (WTB PSPWD 2000) (citing Plumas-Sierra Rural Electric Cooperative, *Order*, 15 FCC Rcd 5572, 5575 ¶ 9 (WTB PSPWD 2000)).

licensees from timely filing renewal applications.<sup>16</sup> Further, each licensee is solely responsible for knowing terms of its license and submitting a renewal application to the Commission in a timely manner.<sup>17</sup> Thus, we deny Malden's request for a waiver to permit the late renewal of its licenses and dismiss the applications as untimely filed.

6. If Malden wishes to obtain a valid authorization for these stations, it must file new, properly coordinated applications.<sup>18</sup> If Malden wishes to continuing operating these facilities until it receives new authorizations, it must obtain authorization to do so.<sup>19</sup>

7. *Ordering Clauses.* Accordingly, IT IS ORDERED that pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, the requests for waiver of Section 1.949 of the Commission's Rules, 47 C.F.R. § 1.949, filed by Malden R-1 School District on June 27, 2002, ARE DENIED, and application FCC File Nos. 0000942369, 0000942376, 0000942402, 0000942543 SHALL BE DISMISSED.

8. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Ramona E. Melson  
Deputy Chief, Public Safety and Private Wireless Division  
Wireless Telecommunications Bureau

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<sup>16</sup> First National Bank of Berryville, *Order*, 15 FCC Rcd 19693, 19696 ¶ 8 (WTB PSPWD 2000) (citing In the Matter of Biennial Regulatory Review-Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Report and Order*, 13 FCC Rcd 21027, 21071 ¶ 96 (1998)).

<sup>17</sup> *ULS MO&O*, 14 FCC Rcd at 11485 ¶ 21; Amendment of Parts 1 and 90 of the Commission's Rules Concerning the Construction, Licensing, and Operation of Private Land Mobile Radio Stations, *Report and Order*, PR Docket No. 90-481, 6 FCC Rcd 7297, 7301 n.41 (1991).

<sup>18</sup> See 47 C.F.R. § 101.103.

<sup>19</sup> See 47 C.F.R. § 1.931.